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IN THE

SUPREME COURT OF THE UNITED STATES

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No. 576

THERON C. LYND, REGISTRAR OF ELECTIONS OF FORREST COUNTY, MISSISSIPPI,
Petitioner,

vs.

ROBERT F. KENNEDY, AS ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JOE T. PATTERSON,
Attorney General of the State of Mississippi,

DUGAS SHANDS,
Assistant Attorney General of the State of Mississippi,

PETER M. STOCKETT, JR.,
Special Assistant Attorney General of the State of Mississippi,

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No.

THERON C. LYND, REGISTRAR OF ELECTIONS OF FORREST COUNTY, MISSISSIPPI,
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ROBERT F. KENNEDY, AS ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

I.

CITATION TO OPINION BELOW.

No opinion was rendered by the United States District Court for the Southern District of Mississippi. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported in 306 F.2d 222 and is set forth in Appendix "A" hereto.

II.

JURISDICTION.

The opinion and order of the United States Court of Appeals for the Fifth Circuit was entered on July 11, 1962, and the order appears in Appendix "B" hereto. A motion for rehearing filed by petitioner was denied by said Court of Appeals on August 8, 1962, and the order denying the motion for rehearing appears in Appendix "C" hereto. The jurisdiction of this court is invoked pursuant to 28 U.S.C.A., Section 1254(1).

III.

QUESTIONS PRESENTED.

1. Did said Circuit Court of Appeals err in holding that the order entered by the District Court remanding the cause to its files was an appealable order?

2. Did said Circuit Court of Appeals err in limiting the judicial inquiry of the District Court solely to the question of whether the defendant-respondent registrar had been served with a duly written record demand by said Attorney General and to the question of whether the defendant-respondent registrar had been afforded notice of the pendency of the enforcement order proceedings?

3. Did said Circuit Court of Appeals err in holding that the factual foundation for, or the sufficiency of, the Attorney General's "statement of the basis and the purpose" contained in the written demand, 42 U.S.C.A., Section 1974(b), is not open to judicial review or ascertainment.

4. Did the Circuit Court of Appeals err in holding that there existed a "case or controversy" within the meaning of Article III, Section 2, of the Constitution of the United

States, and at the same time holding that the Federal Rules of Civil Procedure were not applicable or available to petitioner.

IV.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

This case involves the following constitutional provisions and statutes of the United States, the full text of which will be set out in Appendix "D" hereto:

1. The Fourteenth Amendment to the Constitution of the United States.
2. Title III to Civil Rights Act of 1960.
3. Rule 81(a)(3), Federal Rules of Civil Procedure.
4. 28 U.S.C.A., Section 1291.
5. 28 U.S.C.A., Section 1292(1).

V.

STATEMENT OF CASE.

Honorable W. P. Rogers, as Attorney General of the United States (the Honorable Robert F. Kennedy having been substituted for the original plaintiff after he became Attorney General of the United States), filed complaint on January 19, 1961, for relief under Title III of the Civil Rights Act of 1960, being Title 42, U.S.C.A., Section 1974; and this case lay dormant for a long period of time and while said case was dormant the United States of America filed an independent action seeking to obtain the same relief as was sought in the "Robert F. Kennedy" suit and other relief, and after there was only a partial hearing thereof which

was in the nature of the furnishing of testimony for the plaintiff, and that only, there was an attempt at appeal to the Circuit Court of Appeals by the Plaintiff on theory that there had been entered an order, when there had not been entered an order, and at a time when the defendant was ready and willing to proceed with his testimony in denial of that claimed for the Government of the United States, but this was not allowed and no final hearing has yet been had in that cause. However, that is a separate cause appearing in this Court by way of Petition for Writ of Certiorari, bearing Action Number 355, Theron C. Lynd, Circuit Clerk and Registrar of Voters of Forrest County, and the State of Mississippi, Petitioners, versus United States of America, Respondent. The opinion of the Circuit Court of Appeals in this cause refused and denied the right in petitioner to require application of Rules of Civil Procedure of the United States District Court, and to thereby deprive petitioner of due process and equal protection of law guaranteed to him under the Fourteenth Amendment to the Constitution of the United States of America, being the same amendment which makes possible the Civil Rights legislation, and which should be as applicable and with as much favor to petitioner as to others who might be involved as citizens of the United States.

The record here consists of the pleadings and the opinion of the Circuit Court of Appeals and additional opinion on petition for rehearing, and none other, and certified copy thereof will accompany this petition as required by Rules of the Supreme Court of the United States.

It was on March 13, 1961, that petitioner served a motion "to remand this cause to the files, or suspend the proceedings herein, or dismiss same as abated * * * until Honorable Robert F. Kennedy has himself as Attorney General of the United States been properly substituted herein in

the place and stead of Honorable W. P. Rogers as United States Attorney General." An order for substitution was duly entered.

While the Title III proceeding was pending before United States Judge S. C. Mize and on July 6, 1961, the United States filed its complaint under 42 U.S.C.A. 1971, as aforesaid, naming the Registrar of Forrest County, Mississippi, and the State of Mississippi as defendants (R. 148). At the same time a motion for discovery was filed by the plaintiff under Rule 34, Federal Rules of Civil Procedure (R. 148). Early in January of 1962, United States Judge Cox announced that United States Judge Mize had transferred the Title III proceeding to him and that he would consider it at the same time he heard the Government's 1971 action. It was on hearing in relation thereto before United States Judge Cox that his opinion of January 15, 1962, was entered and a copy thereof appears in Appendix "E" hereto (R. 149). On February 16, 1962, there was a remand to the files of the District Court and said order appears in Appendix "F" hereto. That attempted in this cause for the office of the Attorney General of the United States in the first instance is based upon that order and which order provided that the application of the Attorney General "and all motions of the defendant heretofore filed herein, be and the same are hereby remanded to the Files of this Court." A notice of appeal was filed on March 16, 1962 (R. 150).

VI.

SPECIFICATIONS OF ERRORS.

The Circuit Court of Appeals for the Fifth Circuit erred as follows:

1. In holding that the order entered by the District Court remanding the cause to its files was an appealable order.

2. In limiting the judicial inquiry of the District Court solely to the question of whether the defendant-respondent registrar had been served with a duly written record demand by said Attorney General and to the question of whether the defendant-respondent registrar had been afforded notice of the pendency of the enforcement order proceedings.

3. In holding that the factual foundation for, or the sufficiency of, the Attorney General's "statement of the basis and the purpose" contained in the written demand, 42 U.S.C.A., Section 1974(b), is not open to judicial review or ascertainment.

4. In holding that there existed a "case or controversy" within the meaning of Article III, Section 2, of the Constitution of the United States, and at the same time holding that the Federal Rules of Civil Procedure were not applicable or available to petitioner.

VII.

REASONS RELIED ON FOR GRANTING THE WRIT.

The opinion of the Circuit Court of Appeals for the Fifth Circuit failed to recognize many fundamental issues of law; and said court held that there existed a case or controversy within the meaning of Article III, Section 2, of the Constitution of the United States and erroneously then held that the Federal Rules of Civil Procedure were not applicable and that petitioner could not avail himself thereof, to thereby deprive petitioner of due process and equal protection of the law guaranteed to him by the Constitution of the United States.

Under the Federal Rules of Civil Procedure, a trial court has right to control his docket and what constitutes application of the rules; and in this case there were pending at the same time two cases, one in the name of the Attorney General of the United States and the other in the name of the United States of America; and the office of the Attorney General of the United States, having total charge of the cause filed in the name of the United States of America, sought to obtain again all possible relief which could be obtained through and under the suit filed by the Attorney General of the United States, and that is to say that the suit of the United States of America enveloped and absorbed and consumed the first suit filed for the Attorney General of the United States, to thereby make unnecessary any attempt at litigating that contained in the suit of the Attorney General of the United States. Under these circumstances, the United States District Judge should have been permitted and allowed to follow Federal Rules of Civil Procedure in handling his own docket, and this has been denied him by the Circuit Court of Appeals for the Fifth Circuit. We are, therefore, contending here that every court has inherent power to control the disposition of causes on its docket with forthrightness and in order that justice may be done.

1. The order of the United States District Court constituting basis for the attempt at review by the Circuit Court of Appeals for the Fifth Circuit was not such an order as to admit therefrom an appeal, it not being a reviewable order.

In holding the order of the District Court remanding the cause to its files to be an appealable order the Circuit Court of Appeals for the Fifth Circuit relied solely upon the case of *United States* v. *Wood*, (C.C.A. 5th) 295 F.2d 772. Petitioner submits that the Wood case does not sup-

port the holding that the order here involved was appealable.

United States v. *Wood, supra,* was an action instituted in the United States District Court for the Southern District of Mississippi by the United States pursuant to Title 42, U.S.C.A., Section 1971 (b), (c), (d). The suit was brought on September 20, 1961, and sought to enjoin a state criminal prosecution of one John Hardy which was scheduled to take place on September 22, 1961. In its complaint, the Government alleged that the prosecution of Hardy was in bad faith and was being executed for the purpose of intimidating and coercing negro citizens of Walthall County, Mississippi, from registering to vote. The case came on to be heard on the Government's motion for temporary restraining order on September 21, 1961. After hearing, the District Court denied the Government's motion for temporary restraining order.

In holding the denial of the motion for temporary restraining order to be appealable under the particular and peculiar factual circumstances of that case, the Circuit Court of Appeals for the Fifth Circuit said at 295 F.2d 777:

> "To then call this de facto dismissal a nonappealable interlocutory order is to preclude review altogether. As a practical matter, then, it is clear that the denial of the restraining order is a final disposition of the Government's claimed right to prevent the prosecution of Hardy." *United States* v. *Wood, supra.*

Among the peculiar factual circumstances of that case considered by the Circuit Court of Appeals for the Fifth Circuit in reaching this conclusion was the fact that if the order denying the motion for temporary restraining order were held to be unappealable, then the trial of John Hardy would occur, and consequently, the case would be mooted and any right of appellate review would be destroyed. This

peculiar factual circumstance is the sole basis for the holding of said court in the *Wood* case to the effect that the District Court order was appealable. No such factual circumstance exists here because United States District Judge Cox entered no final order in the cause, and if the Government of the United States or the office of the Attorney General wanted the case lifted from the files and made active again, its right and remedy relating thereto would be by motion therefor, and which was not done.

Please note that in deciding the *Wood* case, the Circuit Court of Appeals for the Fifth Circuit engrafted another exception to the "finality rule" as embodied in 28 U.S.C.A., Section 1291. The United States Supreme Court had previously limited the "finality rule". See *Cohen* v *Beneficial Loan Corp.*, 337 U.S. 541, 93 L. Ed. 1528, and *Swift & Co.* v. *Compania Colombiana*, 339 U.S. 684, 94 L. Ed. 1206. Cf. *Parr* v. *United States*, 351 U.S. 513, 100 L. Ed. 1377, which delimits the scope and extent of *Cohen* and *Swift*. If it is a law that an order of the United States District Court remanding a case to the files is an appealable order, then there must be engrafted another exception, more of liberality with change in "finality rule". Petitioner respectfully submits that the practical effect of decisions such as that made by the Circuit Court of Appeals for the Fifth Circuit in this case makes "practical effect" a convenient and conventional catch-all phrase, totally outside of the true meaning and intent of the appeal statutes.

The Supreme Court of the United States has admonished the courts not to so construe the appeal statutes.

> "This Court, however, is not authorized to approve or declare judicial modification. It is the responsibility of all courts to see that no unauthorized extension or reduction of jurisdiction, direct or indirect, occurs in the federal system. Shanferoke Coal & Supply Corp. v. Westchester Service Corp., 293 U.S. 449,

451, 79 L. Ed. 583, 586, 55 S. Ct. 313. Any such ad hoc decisions disorganize practice by encouraging attempts to secure or oppose appeals with a consequent waste of time and money. The choices fall in the legislative domain." *Baltimore Contractors* v. *Bodinger*, 348 U.S. 176, 99 L. Ed. 233.

2. Said Circuit Court of Appeals erred in limiting the judicial inquiry of the United States District Court solely to questions of whether or not the defendant-respondent registrar had been served with a duly written record demand by said Attorney General and to whether the defendant-respondent registrar had been afforded notice of the pendency of the enforcement order proceedings.

The Circuit Court of Appeals for the Fifth Circuit held that when a demand was made by the Attorney General of the United States under Title III of the Civil Rights Act of 1960, for records, the United States District Court could not do other than determine that the written demand had been delivered to the registrar and that the registrar had notice of the pendency of the enforcement order proceedings. In this, said appellate court was in error. Said appellate court held that the Attorney General of the United States and petitioner were adverse parties and that the proceedings met the requirements of a "case or controversy" under Article III, Section 2, of the Constitution of the United States. Said appellate court then proceeded to divest Title III proceedings of many of the necessary elements of adversary proceedings and a "case or controversy" in said court, said court holding that the judicial inquiry of the District Court should be restricted to the two narrow unimportant issues aforesaid and that the controversy probably could not be litigated by the petitioner in the United States District Court. Stated differently, there was limitation to the rights of the District Court beyond all normal law.

In an adversary proceeding which constitutes a "case or controversy" the party has a right to judicial inquiry by the court in which the action is pending, and this is a necessary right and authority vested in all courts which may exercise the judicial powers vested in them under Article III of the Constitution of the United States, to determine all material issues in litigation. The Supreme Court of the United States has so held in many decisions and has adhered to this rule:

> "Whether a proceeding which results in a grant is a judicial one, does not depend upon the nature of the thing granted, but upon the nature of the proceeding which Congress has provided for securing the grant." *Tuten v. United States*, 270 U.S. 468, 70 L. Ed. 738.

The error of the said Circuit Court of Appeals in this regard was in avoiding the natural and normal and ordinary interpretation of the words contained in said Title III enactment.

In determination of whether or not a statute is valid as a legislative assumption of judicial power, it is important to note whether all questions of a judicial nature are left to the judgments of the courts. See *Florentine* v. *Barton*, 2 Wall. 69 U.S. 210, 17 L. Ed. 786. It is clear that proceedings under Title III as interpreted by said Circuit Court of Appeals in this cause do not meet the standards set forth in the *Tuten* and *Florentine* cases. A review of the legislative history of said Title III requires the conclusion that Congress intended for District Courts to inquire into all material issues in actions thereunder.

Reference is here made to Report No. 956 of the House of Representatives, 86th Congress, 1st Session, which Report accompanied H. R. 8601, which was the Civil Rights Act of 1960, at page 7:

"Section 306 provides that in the event of nonproduction, jurisdiction would be conferred upon the Federal district courts to resolve any dispute which might arise in connection with the exercise of the authority conferred upon the Attorney General by this title including appropriate process to compel the production of the record or paper."

This Court may also be interested in the testimony furnished by Honorable Lawrence E. Walsh, Deputy Attorney General of the United States, one of the chief sponsors of the Civil Rights Act of 1960 at hearing before the Committee on the Judiciary, U. S. Senate, 86th Congress, 2nd Session, on H. R. 8601 held on March 28 and 29, 1960, and reported at page 9 thereof, as follows:

"In the event of nonproduction, jurisdiction is conferred upon the Federal District Courts to resolve any dispute which might arise in connection with the exercise of the authority conferred."

3. The Circuit Court of Appeals erred in holding that the factual foundation for, or the sufficiency of, the Attorney General's "statement of the basis and the purpose" contained in the written demand, 42 U.S.C.A., Section 1974(b), is not open to judicial review or ascertainment.

It is difficult to understand how said Circuit Court of Appeals concluded that the United States District Court was so limited and it is more difficult to understand how the language used in the Act should be so restrictively interpreted. The last sentence of Section 303 of Title III of the Civil Rights Act of 1960 is as follows:

"This demand will contain a statement of the basis and the purpose thereof."

The Civil Rights Act of 1960 as originally drafted did not contain the above quoted sentence. This sentence

was added by way of amendment in the House Judiciary Committee by Congressman Cramer of Florida, an opponent of the Act. Due to the press of time, the House Judiciary Committee did not file a report after the adoption of this amendment by it. However, at Volume 106, No. 54 of the *Congressional Record*, dated March 23, 1960, Congressman Cramer at Page 5940 of the Record gave the following explanation of the legislative purpose and intent in introducing and adopting this amendment:

> "I offered it because I felt the registrar or custodian was entitled to be put on notice as to why such an inspection was being made and as to what law or what constitutional provision, right, or immunity might be involved. It was for that reason that I was considering offering an amendment which would add to line 23, the following, 'and shall state its relation'—that means the demand—'to a right, privilege, or immunity secured or protected by the Constitution or laws of the United States.'
>
> "My discussion of the matter with many members of the House leads me to believe the present wording could be so interpreted and properly so. It was my intention in considering the amendment in the full committee that the Attorney General in making such a demand should advise the local registrar as to the intent and purpose of such a demand and as to the immunity, privilege, or the right that is intended to be involved in any investigation that might be under way and under what Federal law or constitutional provision. I trust this legislative record, particularly in view of the Attorney General's statement itself as evidence for the justification for that section in the bill, as it is contained on page 212 of the hearing at which place the Attorney General said:
>
> "'The Department feels the enactment of this proposal is essential to the effective enforcement of the provisions of the civil rights act of 1957.'

> "I do not mean to imply that my interpretation of Title III issuing powers on demand is that narrow and thus limited to the 1957 act because it is not. But at least it should have some relationship to the title and purpose of the bill, the title of the bill being 'to enforce constitutional rights.'"

The statement of the basis and purpose for the demand given by the Attorney General in his demand letter to Petitioner of August 5, 1960, is as follows:

> "This demand is based upon information in the possession of the Attorney General tending to show that distinctions on the basis of race or color have been made with respect to registration and voting within your jurisdiction. The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not violations of Federal law in regard to registration and voting have occurred."

In view of that contained in the demand letter, your petitioner had limited knowledge or information as to what was expected or demanded of him or why the demand; and under the law petitioner was entitled to a full hearing on these areas not covered by the notice and thus the reason for the argument here made. From a study of the legislative history of the Act and the statutory language, there comes a compelling conclusion that the statement of the basis and purpose of the demand made to petitioner here did not meet the statutory requirements. In this connection, in statutory proceedings it is elemental that the power of judicial inquiry of the courts extend to a determination of whether an administrative agency, in presenting its claim, is within the terms of the statute.

> "Similarly, when the claim rests entirely upon a statute, it seems almost elementary that the defendant be entitled without being forced to go into fur-

ther procedures, to demand sufficient informative facts from the complaint to show that the plaintiff, if his facts be true, is actually within the terms of the statute in making his claim." *Daves* v. *Hawaiian Dredging Co.*, (U.S.D.C. Hawaii, 1953), 114 F. Supp. 643.

It follows that the demand made by the Attorney General on petitioner in this cause did not meet the statutory requirements and that said Circuit Court of Appeals for the Fifth Circuit erred in holding that the factual foundation for or the sufficiency of, the Attorney General's "statement of the basis and the purpose" contained in the written demand, 42 U.S.C.A., Section 1974(b), is not open to judicial review or ascertainment.

4. The Circuit Court of Appeals erred in holding that there existed a "case or controversy" within the meaning of Article III, Section 2, of the Constitution of the United States, and at the same time holding that the Federal Rules of Civil Procedure were not applicable or available to petitioner.

In *United States* v. *Lynd*, 301 F.2d 818, said Circuit Court of Appeals for the Fifth Circuit stated that an application for inspection under Title III "is, however, comparable to the form of a traditional order to show cause, or to produce in aid of an order of an administrative agency."

Rule 81 of the Federal Rules of Civil Procedure expressly sets forth the proceedings to which the Federal Rules are applicable. *Rule 81(a)(3)* provides in part as follows:

"These rules apply (1) to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an

officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the District Court or by order of the court in the proceeding; and (2) to appeal in such proceedings."

In Volume I, *Federal Practice and Procedure, Rules Edition*, Section 127, by Barron and Holtzoff, the provisions of said Rule 81 are explained as follows:

"The rules were clearly intended to apply to the United States, its officers and agencies, as well as to private litigants. The law writers support this view and the courts have generally construed the rules to apply not only to actions brought by the government, but to actions brought against it * * * obiter dicta having the slightest tendency to depart from the spirit of the rules, or to whittle out exceptions, ought to be accepted as authority only when no other course is possible."

In a footnote to the provisions quoted above we find the following:

"22. Rules binding in government cases. The Advisory Committee was pressed by government attorneys to make special provisions in the rules for cases to which the United States is a party. These would have destroyed the uniformity of application of the rules. The government must submit its litigation to the same rules of practice as any other litigant. A few special provisions were necessary. For example the United States is given sixty days instead of the usual twenty days in which to answer a complaint. Mitchell, Some of the Problems Confronting the Advisory Committee, 1937, 23 A. B. A. J. 966."

On March 28 and 29, 1960, at the hearings before the Committee on the Judiciary, United States Senate, 86th Congress, Second Session, on H. R. 8601 (Civil Rights Act of 1960) at page 142:

"Senator Carroll. Let me ask this one question. If we are going to amend this bill at all, what harm could come in a statement—we can make the legislative record in both of these hearings and on the floor of the Senate—but what harm could there be for us to state specifically that this bill is subject to the rules of civil procedure?

"Senator Johnston. That is the same question I have asked.

"Mr. Walsh. The answers are still the same: (1) It would be surplusage and (2) you run into the fact that we do not say that in each section, and if you start putting it in one section, why, you raise doubts as to the others.

"As to the legislative history, I think it should show that to the extent that the rules of the Federal procedure are not inconsistent with the express provisions of the statute, they do apply, because, you see, the rules themselves so provide and rule 1 says that it applies to all civil Federal proceedings, and there are certain listed exceptions which, of course, is not this one.

"Senator Carroll. In other words, we could make a legislative history, a historical legislative record—

"Mr. Walsh. Surely.

"Senator Carroll. Showing the intent, showing that it comes within the rules and it applies generally, without putting in some specific place in the bill.

"On the other hand, it seems to me we might, and we will consider this whether or not we could have a general statement to be all inclusive as to all sections.

"Mr. Walsh. I think the legislative history approach is far better."

Many cases exist which are applicable to the United States and relate to the enforcement of laws for production of documents in aid of administrative agencies. These cases come from throughout the country and in many cir-

cuits, but we will quote from one which involves the Circuit Court of Appeals for the Fifth Circuit and a decision of 1953 and which involves the Department of Internal Revenue and is identified with subpoena *duces tecum*, and we quote from the case as follows:

> "Appellant has failed to observe the important distinction between the administrative proceeding under (26 U.S.C.A. Sec. 3614), and court action to enforce the summons under 26 U.S.C.A. Section 366(a). Rule 81(a) (3) makes the rules of civil procedure applicable to 'proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States.' That means that the rules are applicable to the court action to enforce the summons under 26 U.S.C.A. Section 3633(a)." *Falsone* v. *United States*, 205 F.2d 734.

Enforcement of a subpoena issued by the tax court under the renegotiation act is governed by the rules. Rules 26(b), 30(b) and 45(b) apply in determining the scope of the subpoena. *Boeing Airplane Company* v. *Coggeshall*, 280 F.2d 654, 3 F.R. Ser. 2d 45d. 36 (App. D.C., 1960). Rule 43(a) is applicable in determining competency of a witness in a proceeding for enforcement of a summons of the Internal Revenue Service. *Baird* v. *Koerner*, 279 F.2d 623, 3 F.R. Ser. 2d 43(a).23 (C.A. 9th, 1960).

In accord with the general rule announced by the courts in cases involving officers and agencies of the government having subpoena powers, such as the Federal Trade Commission, and the National Labor Relations Board, we refer to *Federal Trade Commission* v. *Claire Furnace Company*, 274 U.S. 160, 47 S. Ct. 553 (1927); *Federal Trade Commission* v. *Maynard Coal Co.*, 22 F.2d 873 (App. D.C.), and *Dupont et al.* v. *Boland et al.*, 85 F.2d 12 (C.A. 2d, 1936). As stated in the latter case:

"The act does not permit or require actual enforcement of the order of the Board (National Labor Relations Board) * * * until there has been a full judicial review in the ordinary way. Appellant's right to contest the examination of records or the compulsion of testimony may be asserted when application is made to enforce a subpoena." *Dupont et al.* v. *Boland et al.*, supra.

Wherefore, it is respectfully submitted that there is here presented a proper occasion for the exercise of the supervisory power of this Court, and that this petition should be sustained and writ of certiorari issued as contemplated by law.

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